

**WILLIAMSBURG CITY COUNCIL
SEPTEMBER 9, 2004
MINUTES**

The Williamsburg City Council held its regular monthly meeting on September 9, 2004, at 2:00 p.m., in the Council Chambers of the Stryker Building.

ATTENDANCE

Present were Ms. Zeidler, Messrs. Haulman, Scruggs, Chohany and Freiling. Also present were City Manager Tuttle, City Attorney Phillips, and City Clerk Crist.

Staff Attending: Assistant City Manager Miller, Department Heads Clayton, Hudson, Nester, Serra, Walentisch, Weiler and Yost.

CALL TO ORDER

Mayor Zeidler called the meeting to order.

COUNCIL MINUTES

Mr. Scruggs Moved That City Council Approve the Minutes of August 9 and August 12, and August 14, 2004. The Motion Was Seconded by Mr. Haulman.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

Mr. Scruggs Moved Approval of the Minutes of August 10 and August 11, 2004. The Motion was Seconded by Mr. Freiling.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Chohany

No: None

Abstain: Mr. Haulman

Mayor Zeidler said it was her pleasure to welcome the group of local officials, Mayors and Vice Mayors, from Croatia. The visit to Williamsburg was coordinated by the Virginia Municipal League, and their visit to the United States was sponsored by the International City/County Managers Association.

They are in the country to see how the staff, leadership, and membership of a state-level association in the United States work together to articulate and lobby for issues of common concerns. The Croatian representatives will be present for the start of the meeting and are particularly interested in the public hearing process. Prior to the meeting, the visitors were welcomed by the Mayor and City Manager, and were introduced to members of Council and the Clerk of Council.

SPECIAL PRIVILEGE

Excellence in Service to Williamsburg Award Presented to Jacquelyn P. Herrmann

Mayor Zeidler said it was her pleasure to present this award because it represented a city employee's excellent work, which has been recognized by coworkers and peers.

Mayor Zeidler invited Ms. Herrmann to the podium where she read the recognition outlining Ms. Herrmann's contributions to the City of Williamsburg. The Mayor presented Ms. Herrmann with the "Excellence in Service to Williamsburg Award."

Ms. Herrmann thanked City Council and said it was a pleasure to work at the city and to work with her fellow employees.

PUBLIC HEARING

Appeal of ARB #04-077: Appeal of the ARB's Denial of a Request to Demolish 604 South Henry Street

Reference for this item was Mr. Nester's report dated September 9, 2004. Ms. Murphy reviewed the information providing the background on this appeal as outlined in the report. On July 13, 2004, the Architectural Review Board denied Ms. Gracie Jackson's request to demolish a single-family dwelling at 604 South Henry Street by a 4-3 vote. The building is identified on the city's listing of Locally Significant Architecture and Areas. The board denied the request based on the following reasons:

1. The applicant did not offer sufficient evidence to prove that the building is beyond repair.
2. No consideration was given to relocating the dwelling.
3. The corner location of the building allows for the potential redevelopment of the site while keeping the existing dwelling as a representation of the type of dwelling workers inhabited earlier in the history of the City.
4. The applicant proposes demolition of a structure that is on the City's Listing of Locally Significant Architecture and Areas without showing the type of redevelopment planned for the property.
5. The owner of the building has the option to utilize Sec. 21-858 of the Zoning Ordinance, which allows the owner to demolish the building if the owner has applied to City Council for such right, and if the building has been offered for sale for a 12 month period and no one purchases the property for restoration.

Ms. Murphy showed a photograph of the home and map of the surrounding properties, noting other ageing structures that had been demolished. Since the time of the denial by the ARB, the applicant engaged Mr. Jeff Barra, Architect, to make an assessment of the structure at 604 S. Henry Street. City Council will need to decide whether to affirm, reverse or modify, in whole or part, the decision of the Architectural Review Board.

Mayor Zeidler opened the public hearing.

Susanna B. Hickman, Attorney, representing Ms. Jackson, prefaced her comments by disclosing she owns the adjoining property at 608 S. Henry Street and has an interest in rehabilitation of these properties. She noted she had already received approval from the ARB to demolish the property that she owns on South Henry Street. Gracie Jackson, John Diggs, Jeff Barra, and Mr. Mel Spruill were present. She asked Council to reverse the action of the ARB. The board's decision was wrong because the structure has no historical or architectural value, its demolition will positively impact the surrounding area, the decision is inconsistent because the ARB has approved the demolition of the home at 608 S. Henry, the demolition would be consistent with the Comprehensive Plan review, and because the structure is not in livable condition. Ms. Jackson does not have the resources to restore the house or have it painted (she was recently cited that the house needed repainting). The

Architect, Mr. Barra, estimated the cost to renovate the structure to be \$252.00 per square foot. However, it would be more of a reconstruction, not a renovation.

Ms. Jackson would like to sell the house for redevelopment to condominiums. This is an opportunity to improve the historical character and integrity of this block with a redevelopment in keeping with other structures in this area. She asked that Council not let the house continue to deteriorate and that they approve the appeal request for destruction.

Gracie Jackson, owner of 604 S. Henry Street, said she inherited the property from her mother, but she was not financially able to renovate the house. The money from the sale of the house will help her to settle her mother's affairs and bring closure.

Micou Savage Glazener, James City County, spoke in support of Ms. Jackson's appeal. Ms. Glazener has lived in the Williamsburg area for 55 years. Ms. Jackson's mother was a "character" and friend of Ms. Glazener's family. She cited other homes have been demolished in this area, and the city did not take this same stand. Ms. Jackson is being treated differently. She supported Ms. Jackson's request.

Alicia Diehl, 900 South Henry Street, commented that this house has been inherited through the Lee family, the land purchased in 1880. Ms. Diehl directed personal comments to Ms. Jackson regarding the home's history. This house is typical of the working class and many of the homes have been destroyed. This house is on the Historic Registry, and that gives the city the responsibility to protect the structures in the historic corridor. If destroyed, this will be one less affordable home for the middle class. The house was not offered for public sale; someone might want to purchase and restore it. She hoped Council will give the home and family history a chance.

Rosie Takecian, 20 The Palisades, stated that it would be in the best interest of the community to demolish the house. It cannot sustain the type of life it needs. Mr. Diggs (developer) is doing what he thinks is in the best interest of the community.

Mickey Simpson, Counselors Close, stated he is a builder by trade. He has not seen the inside of the house, but there is mold, rotted joists, lead paint, and it cannot be restored. It has no architectural character and it has outgrown and outlived its usefulness. It does not enhance the drive into Williamsburg on South Henry Street. He did not believe someone would put a lot of money into the structure.

Mr. Andrew Edwards, Archaeologist, 800 S. Henry Street, urged Council to uphold the decision of the ARB because of their reasons. The house has classic architectural value for a certain period of Williamsburg which is slowly being demolished. The house has never been placed on the open market and someone might buy it. He asked Council to uphold the ARB's decision or change the boundaries of the preservation area.

Bill Bull, 513 Tyler Street, commented that the redevelopment of a higher density is desired under the new Comprehensive Plan. Condominiums would increase the tax base compared to the existing property, and the owner should be able to do what she wants to do with her property.

No one else wished to speak. The public hearing was closed.

A discussion followed the public hearing.

Mr. Spruill and Mr. Diggs responded that twelve condominium units would be constructed, four units to a floor, three floors, with parking beneath the building, similar to others on the street. Approximate cost would be \$200,000 per unit. However, design plans have not been developed.

Mr. Freiling questioned that since the house has not been put on the market, how do we know someone would not be willing to purchase the house and refurbish it. Mr. Barra addressed the economic feasibility of renovating the house. Ms. Hickman said that it was her personal opinion that no one would want to purchase and renovate the home.

Ms. Murphy clarified that the home is on the city's listing of Locally Significant Architecture. The ARB had a difficult decision to make concerning this application. At the time of its meeting, the board did not have the benefit of the architect's report. Staff had recommended approval of the demolition because of the condition of the house.

Mr. Nester said that the Comprehensive Plan designates the land use for this area as medium density, multifamily. It is zoned RM-1 which includes condominiums with a special use permit, at a density of eight units per acre. He reviewed other properties in the area and noted that this area was not an Architectural Preservation area.

Mr. Phillips added that "architecturally significant" is a local designation—not state or national designation. If a structure is located in a preservation area, that does not mean that the building should be preserved, but it should not be destroyed lightly. There is a balance. The economics could be out of proportion with historic significance. An alternative course would be for the property owner to put the property for sale on the open market for a period of time, but if it did not sell, that would provide evidence of its state of dilapidation. The property could then be bought by the locality or demolished. That would take more time.

Mr. Spruill responded to Council that in his assessment, the home is ageing and in disrepair, is infested with rodents and insects, leaks, weak joints, mold, mildew, animal dander, and it could not meet the Building Code in terms of restoration. The idea of restoring the home is an overwhelming task and very costly.

Ms. Murphy confirmed that in September 2000, Housing Partnerships applied to place Hardiplank siding over the existing siding. However, once the siding shingles were removed, the wood siding was found to be in good shape, so the application was withdrawn.

Mr. Haulman commented that this was a difficult decision. Preservation of neighborhoods is important to the city. While he would have liked to see some innovative thinking for this house, it is best to take the house down.

Mayor Zeidler concurred with Mr. Haulman. She was told by an architectural historian that the house was not distinctive and is an economic hardship. She would vote to reverse the decision of the ARB.

Mr. Chohany Moved That City Council Reverse the Decision of the Architectural Review Board to Deny ARB #04-077 concerning 604 South Henry Street. The Motion was Seconded by Mr. Haulman.

Mr. Scruggs commented that some buildings do outlive their time, and there are better uses for the land. Property rights are valuable, and the owner should be able to decide what to do with their property.

Mr. Freiling said this was a difficult decision for him, and still questioned if someone would invest in the property to restore it. The market has not been tested for interest to purchase the house and put money into restoring the home. Other homes in the city have been in bad shape, but have sold and will cost a lot of money to renovate. The property could be placed on the open market.

Recorded Vote on the Motion:

Aye: Scruggs, Zeidler, Haulman, Chohany

No: Freiling

PCR #04-015: Request of Yankee Candle for a Special Use Permit for a Retail Store with a Gross Floor Area Exceeding 50,000 sq. ft. at 2200 Richmond Road

Reference for this item was Mr. Nester's report dated September 9, 2004. Mr. Nester reviewed a site map of the property which backs up to the Skipwith Subdivision. The existing motel structure on the property will be demolished. Yankee Candle has proposed to build a retail store of 65,000 square feet with three freestanding restaurants. The B-2 Tourist Business District zoning requires a special use permit for retail stores in excess of 50,000 square feet, but not for the restaurants. The property is designated as Corridor Commercial land use in the 1998 Comprehensive plan.

Mr. Nester explained that the site plan had been revised to move the building forward fourteen feet closer to Richmond Road by reducing the front landscape buffer and by eliminating the center landscape islands in front of the building. Council members were shown a copy of the finished building elevations.

Mr. Nester said this proposal is consistent with the Comprehensive Plan and fits this area. There are 469 parking spaces proposed, which is a surplus of 27 spaces. Stormwater Management will pipe runoff to the Skipwith Pond. The screening buffer required between single family development and commercial development is 35 feet with an additional 15 feet of setback. Mr. Copan, Skipwith property owner located to the rear of this property, requested that Planning Commission move the building forward and make the necessary site plan changes. Mr. Nester reviewed the proposed landscaping plan and said a traffic study for the property was prepared by DRW Consultants. A right-turn lane into the property at the north entrance is planned and the center turn lane on Richmond Road will be extended about 70 feet to the north. The need for a traffic signal will be studied at some time after the building is completed.

The Planning Commission held a public hearing on this request and recommended that the special use permit be approved with conditions. Mr. Nester read the conditions, and noted that the site plan already reflects that the building and parking lot have been moved 14 feet closer to Richmond Road as recommended by the Planning Commission.

Mayor Zeidler opened the public hearing.

Vernon Geddy, 1177 Jamestown Road, representing Yankee Candle, provided Council with background information about Yankee Candle. He said that Bob Singley and Rich Costello were also present. This is the second flagship store for Yankee. This project will redevelop an obsolete property. At build out, the businesses are estimated to produce \$820,000 in annual tax revenues. Yankee Candle has met with the surrounding property owners and made many site plan additions and revisions to insure the privacy of single family property owners. The proposed plan provides the parking spaces that are needed along with 39% open space. The proposal is consistent with the Comprehensive Plan and with the zoning classification. The ARB has approved the design of the building. Mr. Geddy asked Council for their approval of the Special Use Permit.

William Copan, 214 Captain Newport Circle, said he owns the property in Skipwith Farms to the rear of this property. He was speaking against the proposed special use permit as presented in its present form. He does not oppose Yankee Candle as a neighbor, but would like additional modifications to the plans, particularly the issue of the building set back. Mr. Copan read his prepared statement (see attached).

No one else wished to speak. The public hearing was closed.

Mr. Nester explained to Council that he heard from Mr. Copan objecting to the request and received a letter from Mr. Prassas, 214 Captain Newport Circle, favoring the project. Mr. Nester explained that the Site Plan Committee met to review the latest site plan which reflected the building and parking lot being moved forward 14 feet closer to Richmond Road by reducing the front landscape buffer by 4 feet and by eliminating five 10-foot wide center landscape islands in front of the building. The building is 45 feet in height and sets 68 feet from the property line. He noted that the Planning Commission is charged with reviewing site plans, not City Council.

Mr. Scruggs thanked staff and the City Manager for their work on this project. He was pleased to receive a Master Plan from the developer. Staff had the foresight to consider placement of a traffic signal in the future and work with flexibility with the developer.

Mr. Freiling applauded the developer for providing additional parking. Mr. Nester noted that the Skipwith property was in James City County before being annexed into the city in 1984. At that time, the requirement was for a five foot landscaped strip between residential and commercial property. Since then, substantial improvements were made to the Zoning Ordinance.

Mayor Zeidler said this was a difficult decision for her. She liked the additional landscaping on the original plan, but was pleased that the Planning Commission listened to Mr. Copane to provide the additional buffer. She will vote to approve this SUP.

Mr. Haulman said that while this was a difficult situation for all the parties, it is a win for the neighbors, a win for the city to have this property redeveloped, and the developer is pleased.

Mr. Haulman Moved That City Council Approve the Special Use Permit for Yankee Candle, Contingent Upon the Seven Revised Conditions Based Upon the Planning Commission Recommendation As Follows:

- 1. The special use permit approves the plan titled "Special Use Permit Plan, Yankee Candle Company, at Motorcourt, City of Williamsburg, Virginia", consisting of three sheets dated 6/27/04, last revised 8/4/04, prepared by AES Consulting Engineers.*
- 2. The special use permit grants waivers to eliminate the landscape buffers required north of the Parcel 2 restaurant along the interior property line.*
- 3. The special use permit grants waivers to reduce the requirement for trees along the frontage of the Yankee Candle property (Parcel 1) from nine to six, due to the location of the Dominion Power easement on the north end of the property.*
- 4. The Planning Commission reserves the right to require additional landscaping and a six foot high solid fence along the rear of the property as a part of the final site plan review.*
- 5. The materials of the three freestanding restaurants shall be coordinated with the design of the Yankee Candle building, and approved by the Architectural Review Board.*
- 6. An easement shall be recorded, prior to the issuance of a certificate of occupancy for Yankee Candle, to allow the adjacent property to the south to have vehicular access to the Yankee Candle site, as shown on the plan approved in condition #1. The construction of this access shall be at the cost of the adjacent property owner.*
- 7. A traffic study shall be performed for the Yankee Candle site following the opening of the building, at a time acceptable to the City. The optimal time for the study is in the July 15 to August 15 time frame, and the study shall be completed preferably in summer 2005, but no later than summer 2006. This study shall be coordinated with a City study of the surrounding Richmond Road corridor including the Waltz Farm Drive intersection. Following the completion of the studies, the City shall determine, no later than December 31, 2006, whether or not a traffic signal is needed, and where it should be located if it is needed. Prior to the issuance of a land disturbing permit, Maple and Main Redevelopment L.L.C. or its successor in title (the developer) shall post a bond, letter of credit or certified check, approved as to form by the City Attorney, in the amount of \$150,000.00 ("Surety"), guaranteeing the design and construction a traffic signal by July 1, 2007.*
 - a. If the City determines that a traffic signal is needed at the Yankee Candle site, the developer shall pay 100% of the cost of the design and construction of the traffic signal. The design of the signal shall be subject to City approval.*
 - b. If the City determines that a traffic signal is needed at Waltz Farm Drive, the developer shall contribute \$35,000 to be used for the construction of the Waltz Farm Drive traffic signal.*
 - c. If a traffic signal is initially constructed at Waltz Farm Drive with a \$35,000 contribution from the developer of the Yankee Candle site, and if the owner of the Yankee Candle site requests a traffic signal at the Yankee Candle site within ten years from the date of the issuance of a certificate of occupancy for Yankee Candle, and if the City determines that a traffic signal is needed for the Yankee Candle site, the City shall contribute \$35,000 to the cost of the traffic signal and the owner of the Yankee Candle site*

shall be responsible for the design and construction of the traffic signal, subject to City approval, and for the payment of the balance of the cost.

d. If the City determines no traffic signal is needed at either the Yankee Candle site or at Waltz Farm Drive or upon completion of the traffic signal described in a. above or payment of the \$35,000 described in b. above, all Surety held by the City shall be released and returned to the developer.

The Motion Was Seconded by Mr. Chohany.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

REPORTS

Monthly Financial Statement

The Monthly Financial Report was received and ordered filed.

Mr. Serra noted that the Sales Tax figure may be inconsistent because of spotty reporting by businesses.

Monthly Departmental Operating Reports

The Monthly Departmental Operating Reports were received and ordered filed.

Chief Weiler responded that the numbers on the EMS Report differ greatly between 2003 and 2004 because of the shift from calendar year to fiscal year.

City Manager Reports

Watershed Protection Property Purchase, 227 Oak Tree Road

Reference for this item was Mr. Tuttle's report dated September 2, 2004, which included a copy of the Contract of Purchase. Mr. Tuttle said that at their August 9, 2004 Work Session, in open session, City Council authorized the City Manager and City Attorney to purchase approximately 30 acres on Oak Tree Road as watershed protection property. The contract has been signed by the owner. Mr. Tuttle reviewed a map of the land area surrounding the Waller Mill Reservoir and noted that this purchase will bring the total watershed area owned by the city to 2710 acres.

Mr. Tuttle recommended that Council ratify the purchase of the property at 227 Oak Tree Road in the amount of \$360,000.

Mayor Zeidler said that purchase of this property is critical to protecting the city's watershed.

Mr. Scruggs Moved That City Council Ratify the Purchase of Property at 227 Oaktree Road for Waller Mill Reservoir Watershed Protection in the Amount of \$360,000. The Motion Was Seconded by Mr. Freiling.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

Amendment to Tour Guide Ordinance, *Proposed Ordinance #04-22*

Reference for this item was Mr. Tuttle's report dated September 2, 2004, which included a copy of the proposed ordinance.

Mr. Tuttle explained that this ordinance would amend the city's Tour Guide Ordinance to restrict solicitation of customers and monetary transactions on city streets. This is not a change of policy. The reason for the addition to the Tour Guide Ordinance is to make the existing policy transparent in that Ordinance for the benefit of all. It is very important that visitors to our city be able to walk the public streets and sidewalks free from personal solicitation. Adding the provision in the Tour Guide Ordinance will reinforce this long standing policy.

Tour Guide businesses routinely sell tickets on private property prior to the tour, not on the street, in respect for the city's Solicitation Ordinance which does not allow commercial solicitation on public property, except in cases of city authorized special events. Mr. Tuttle recommended that City Council adopt the proposed ordinance.

Mr. Freiling Moved That City Council Adopt Proposed Ordinance #04-22, An Ordinance to Amend Section 9-349 of Chapter 9, Article VII of the Williamsburg Code by Adding Thereto Subsection (f) Prohibiting the Solicitation of Customers, Sale of Tickets or Merchandise or Collecting Compensation on the Public Streets, Sidewalks, or Other Public properties of the City. The Motion was Seconded by Mr. Haulman.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

(SEE ATTACHED ADOPTED ORDINANCE #04-22)

\$200 Additional Augmented Fine, S. England Street, *Proposed Resolution #04-17*

Reference for this item was Mr. Tuttle's report dated August 31, 2004. Mr. Clayton said that a petition has been received requesting that a portion of S. England Street from Newport Avenue to the end of the public right-of-way be designated as an augmented fine street. This is the tenth request for an augmented fine street, and Mr. Clayton reviewed a list of streets with augmented fines to date. City ordinance requires a petition to be signed by 75% of the owners fronting on the street, and the street must be a residential through street with a 25 mph or less speed limit. This petition meets the 75% threshold as required and meets the definition of a "residential through street" with a 25 mph speed limit.

The Police Department conducted a traffic study to determine speeds and volumes of vehicles using S. England Street. The study revealed that the speeds are not generally high, but staff recommended approval of the request due to strong neighborhood support. Staff recommended that Council adopt the proposed resolution.

Mr. Phillips explained that Judge Zepkin has adopted a schedule of increments for speeding fines. The fines are imposed only on residential streets.

Chief Yost confirmed that the augmented fine does make a difference in the number of speeders on a street. Mr. Haulman noted that his street, Newport Avenue, is much better since the fine was imposed. Chief Yost said that initially the police will heavily patrol a new augmented street until they start to see the results of police presence and the new fine.

Mr. Scruggs suggested the speed board be placed on S. England Street to remind people of their speed.

Mr. Freiling Moved That City Council Approve Proposed Resolution #04-17, Designating South England Street From Newport Avenue to the Public Right-of-Way as an Augmented Fine Street. The Motion Was Seconded by Mr. Scruggs.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None (SEE ATTACHED ADOPTED RESOLUTION #04-17)

NEW BUSINESS

September 11 Remembrance: Chief Weiler said that a remembrance ceremony will be held at the Williamsburg-James City County Courthouse on Saturday, September 11, 2004, in memory of all of those who lost their lives in the terrorist attacks. He encouraged citizens to attend.

OPEN FORUM

No one wished to speak.

The meeting adjourned at 4:20 p.m.

Approved: October 14, 2004

Shelia Y. Crist
Clerk of Council

Jeanne Zeidler
Mayor